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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/575,997
Filing Date: April 17, 2006
Appellant(s): SCHUSTER, RICHARD L.

Keats A. Quinalty
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06 January 2010 appealing from the Office action mailed 12 May 2009.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

U.S. Application No. 11/200,803

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,350,109	BROWN ET AL	9-1994
5,072,876	WILSON	12-1991
2,568,204	REESER	9-1951

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6,250,542	NEGELEN	6-2001
6,112,977	SUTHERLAND ET AL	9-2000
6,170,741	SKOLIK ET AL	1-2001
3,166,229	SHERMAN ET AL	1-1965
3,533,549	GILCHRIST	10-1970
47-7243-01	Japanese reference(cited in IDS of 7/17/08) - used in Notification of Reason for Refusal in JP 2006-509116 (NPL submitted with IDS 7/17/08)	1972

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 7, 8, 12-15, 36-39, 41, 42 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al in view of Wilson, either Reeser or Negelen and either Sutherland et al or Skolik et al. Brown et al discloses a carton including bottom panel 23, top

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panel 21, first side panel 22, second side panel 20 and side end flaps 25-28 secured to one another on opposite sides of each of the panels. Each of the top end flaps and first and second side end flaps include handle apertures which align at each end of the carton (see fig.2 and figs. 4-6 after folding of the handle flaps). Brown et al does not disclose an insert or two inserts (cls. 36-39, 41-46) at each end of the carton formed with a handle aperture and secured to one of the side end flaps at each end of the carton (cl. 4) or to the top end flaps at each end of the carton (cl. 5). Brown et al further does not disclose an insert with the limitations as defined in dependent claims 7, 8, 12-15, 37-39, 41, 42 and 46. Wilson teaches that it is known to reinforce end handle apertures in a carton using an underlying panel insert (58, 36, 58) or inserts (58, 58). With respect to claims 7 and 15, Wilson teaches an insert which is positioned intermediate the top end flaps and the side end flaps. With respect to claims 8, 13 and 42, Wilson teaches an insert where the handle apertures 60 are larger than the apertures 20 which are configured for the hand of a person. With respect to claims 12 and 46, Wilson teaches an insert which extends across the top panel via the section 36. With respect to claim 14, note is made of the perforated apertures forming the connections between 36 and each reinforcing panel 58. With respect to claim 37-39 and 41, note is made of the glue 6 securing the top end flaps to the side end flaps in Brown et al to close the ends of the carton. Each of Sutherland et al and Skolik et al teaches that it is known to form a handle reinforcing insert (220, 23, respectively) as a separate element secured to the carton. Each of Reeser and Negelen teaches the desirability of making handle apertures in the sides of a carton using three plies (panel 18, partial panels 26 and reinforcing panel 36; 28, 29, 31, respectively). It would have been obvious to reinforce the end wall apertures in Brown et al with an insert or inserts as taught by Wilson and to form the insert or inserts as a separate

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element(s) from the carton blank as taught by either Sutherland or Skolik et al to provide greater strength to the handle areas in Brown et al around the handle aperture(s) and to allow manufacture of the container at separate locations and/or using separate manufacturing apparatus. The modification would also have been obvious to one skilled in the art having knowledge of the all the prior art since the combination is yielding results, i.e. reinforcement by securing a separate panel and separate manufacture that would have been clearly predictable to one skilled in the art upon consideration of the art as a whole. It would further have been obvious to maintain the handle apertures in the partial side end flaps 25, 27 of Brown et al as taught by either Reeser or Negelen as a way of further reinforcing the handle by forming a three ply structure.

Claims 36-39, 41 and 42 are further rejected under 35 USC 103(a) as being unpatentable over Brown et al in view of Wilson, either Reeser or Negelen and Japanese 47-7243, hereinafter referred to as JP '243. Brown et al discloses a carton including bottom panel 23, top panel 21, first side panel 22, second side panel 20 and side end flaps 25-28 secured to one another on opposite sides of each of the panels. Each of the top end flaps and first and second side end flaps include handle apertures which align at each end of the carton (see fig.2 and figs. 4-6 after folding of the handle flaps). Brown et al does not disclose inserts at each end of the carton formed with a handle aperture. Brown et al further does not disclose an insert with the limitations as defined in dependent claims 37-39, 41 and 42. Wilson teaches that it is known to reinforce end handle apertures in a carton using underlying panel inserts (58, 58). With respect to claim 42, Wilson teaches an insert where the handle apertures 60 are larger than the apertures 20 which are configured for the hand of a person. With respect to claim 37-39 and 41, note is made

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of the glue 6 securing the top end flaps to the side end flaps in Brown et al to close the ends of the carton. JP '243 teaches that it is known to form handle attachments using separate elements applied around each handle aperture in the ends of a carton. Each of Reeser and Negelen teaches the desirability of making handle apertures in the sides of a carton using three plies (panel 18, partial panels 26 and reinforcing panel 36; 28, 29, 31, respectively). It would have been obvious to reinforce the end wall apertures in Brown et al with inserts as taught by Wilson and to form the inserts as a separate elements from the carton blank as taught by JP '243 to provide greater strength to the handle areas in Brown et al around the handle aperture(s) and to allow manufacture of the container at separate locations and/or using separate manufacturing apparatus. The modification would also have been obvious to one skilled in the art having knowledge of the all the prior art since the combination is yielding results, i.e. reinforcement by securing a separate panel and separate manufacture that would have been clearly predictable to one skilled in the art upon consideration of the art as a whole. It would further have been obvious to maintain the handle apertures in the partial side end flaps 25, 27 of Brown et al as taught by either Reeser or Negelen as a way of further reinforcing the handle by forming a three ply structure.

Claims 9 and 16 are rejected under 35 USC 103(a) as being unpatentable over the prior art as applied to claims 8 and 15, respectively above, and further in view of Sherman et al.

Modified Brown et al fails to evidence tear lines in the top and side panels to form a dispenser flap. Sherman et al teaches that it is known to make a carton with a perforated tear out area (20) to facilitate easier opening of the top and dispensing of the contents. It would have been obvious

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to make the top of the carton in modified Brown et al with a tear out area as taught by Sherman et al to facilitate easier access to the contents.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 42 in either rejection above, and further in view of Sherman et al. Modified Brown et al fails to evidence tear lines in the top and side panels form a dispenser flap. Sherman et al teaches that it is known to make a carton with a perforated tear out area (20) to facilitate easier opening of the top and dispensing of the contents. It would have been obvious to make the top of the carton in modified Brown et al with a tear out area as taught by Sherman et al to facilitate easier access to the contents.

Claims 10, 11 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 9 and 16 above, and further in view of Gilchrist. Modified Brown et al fails to evidence formation of the perforated area with two sections. Gilchrist teaches that it is known to make a perforated tear out area in two sections (64, 66) with a finger engagement area (72) there between. It would have been obvious to form the perforated tear out area in modified Brown et al in two sections as taught by Gilchrist to allow selective access to one side or to the entire top of the carton and to facilitate finger engagement for removal of the tear out sections.

Claims 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 43 above, and further in view of Gilchrist. Modified Brown et al fails to evidence formation of the perforated area with two sections. Gilchrist teaches that it is known to make a perforated tear out area in two sections (64, 66) with a finger engagement area (72) there between. It would have been obvious to form the perforated tear out area in modified

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Brown et al in two sections as taught by Gilchrist to allow selective access to one side or to the entire top of the carton and to facilitate finger engagement for removal of the tear out sections.

(10) Response to Argument

The Brief makes three arguments to support the assertion that the modification of providing an additional reinforcing layer around the handle aperture in Brown et al would not have been obvious to one skilled in this art.

The first and second arguments (A & B in the Brief) is that since Brown et al provides handle aperture flaps that collapse to form a wider horizontal surface for the users hand (see figs. 4-6 in Brown et al), one cannot add a reinforcement panel intermediate the overlapping end panels without destroying the principle of operation of the support flap construction and the insert would necessarily have to include a collapsible flap along with the support flaps disclosed in Brown et al. The argument is also made that there is no reasonable expectation of success in providing an additional reinforcement layer around the handles in Brown et al.

In response, providing a reinforcing layer around the handles in Brown et al does not require interference with or a change in the operation of the support flaps nor does it require another handle flap as part of the support flaps. The purpose of the support flaps in Brown et al is to form a horizontal surface for the hand, i.e. comfort during use and a distribution of the load along the hand. The purpose of the reinforcement is to reinforce the areas around the handle aperture and prevents tearing or bending of the paperboard area over the aperture during carrying of heavy items. Since the reinforcement as taught by the prior art is formed with an aperture and is used to reinforce around the aperture area, it is unclear why such reinforcement would change the operation of the support flaps or would require a flap as part of the handle flap structure to

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operate. The remarks seem to be directed to a modification which is not being taught by the prior art, i.e. formation of inserts with aperture flaps. If the teaching of Wilson included such a handle flap, the argument regarding interference and/or destroying the principle of operation of the handle flaps in Brown et al would be more persuasive. As for the argument that there is no reasonable expectation of success in providing a reinforcing layer around the handle apertures in Brown et al, the argument is not persuasive in that the other prior art illustrates success in providing such reinforcing layers.

The third argument (C in the Brief) is that one of ordinary skill in this art would have no motivation to make the modifications as proposed in the rejections and that the prior art fails to provide any motivation.

In response, the prior art clearly evidences the desirability of forming a handle in the end of a carton with three plies. One skilled in the art having knowledge of Reeser or Negelen could not fail to appreciate the strength three plies provide over forming just two plies. The prior art clearly suggests formation of reinforcing inserts as separately formed elements which allows more flexible manufacture of the carton, i.e. more flexible in terms of where and how the parts are formed. One of ordinary skill in this art would not have found separate manufacture and subsequent attachment to be a new concept in this art as evidenced by the Sutherland et al, Skolik et al and JP '243 references. The patent to Wilson clearly suggests an insert or inserts to reinforce handles in the ends of a carton and would have suggested use of an insert or inserts to reinforce the end wall handle apertures in the very similarly constructed carton of Brown et al. Consideration of the prior art of Wilson and either Reeser or Negelen, making a three ply structure using an insert as a reinforcement in Brown et al is suggested by the prior art and one

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skilled in this art would have found ample motivation in the apparent strength of a three ply structure where the third ply is formed by an insert or inserts around the handle apertures. The determination of obviousness in this application was made in light of the prior art as a whole and what that art would have suggested to one skilled in this art. The claimed invention is considered to be within the level of skill represented by the evidence of record.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Gary E. Elkins/

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